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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/849,783	05/05/2001	Michael Neal	DEM1P006	9893
36088	7590	05/25/2005	EXAMINER	
KANG LIM 3494 CAMINO TASSAJARA ROAD #436 DANVILLE, CA 94306			VAN DOREN, BETH	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/849,783	NEAL ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Beth Van Doren	3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 05 May 2001.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-8 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-8 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 05 May 2001 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date *see attached*.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

## DETAILED ACTION

1. The following is a non-final, first office action on the merits. Claims 1-8 are pending.

### *Claim Rejections - 35 USC § 101*

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 5-8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract that do not apply, involve, use, or advance the technological arts fail to promote the “progress of science and the useful arts” (i.e. the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claim 5 recites a method for creating a promotional calendar. The method comprises models and using these models to determine combinations of offers and promotional events. None of these elements contain or require any specific technology. Therefore, each of the elements in the body of the claim could be implemented and used without the use of technology and therefore the claim is not considered within the technological arts. Claims 6 and 7 depend from claim 5 and contain the same deficiencies. Claim 8 is also directed

towards a method of creating an event calendar and contains equivalent elements to claims 5-7.

Therefore, since none of the elements of claim 8 require technology to be used or implements, claim 8 is not considered within the technological arts.

Although the claimed invention does produce a useful, concrete, and tangible result, since the claimed invention is not within the technological arts, as explained above, claims 5-8 are deemed to be directed towards non-statutory subject matter.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 5 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5 and 8 are considered indefinite because the preamble of each claim does not match the steps in the body of the claim. For example, the preamble states that claim 5 is a “method for creating a promotional event calendar”, however the elements in the body of the claim do not contain any recitation concerning a creation of a calendar. Claim 8 contains the same deficiency. Therefore, claims 5 and 8 are indefinite because applicant has not particularly pointed out and distinctly claimed his invention. For examination purposes, examiner has considered the selected combinations of the offers and promotional events as the created event calendar in as much as this selection is a planning of events for future promotions.

***Claim Objections***

6. Claim 2 is objected to because of the following informalities: Claim 2 ends with two punctuation marks. Appropriate correction is required.

***Specification***

7. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it is two paragraphs. Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2 and 4-8 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Cunningham et al. (U.S. 6,029,139).

9. As per claim 1, Cunningham et al. teaches an apparatus for creating a promotional event calendar, comprising:

an econometric engine for modeling sales as a function of price to create a sales model (See column 2, lines 65-column 3, line 3, column 5, lines 13-23, column 6, lines 1-20, column 8, lines 1-10, column 10, lines 55-65, which discusses modeling sales using price and sales information);

a financial model engine for modeling costs to create a cost model (See column 5, lines 14-41, column 8, lines 1-12, column 10, lines 55-65, column 11, lines 65-column 12, line 5 and lines 45-52, which discusses modeling costs using cost data);

a promotional engine coupled to the econometric engine, and financial model engine to receive input from the econometric engine and financial model engine, wherein the promotional engine analyzes a plurality of offers and a plurality of promotional events to optimally match offers with promotional events to create a promotional event calendar (See figure 2, column 2, lines 24-31, column 5, lines 13-42 and 59-65, column 11, lines 35-45 and 65-column 12, line 15 and lines 45-52, wherein an engine uses the output of the other engines to analyze and optimize promotional options to match offers and events (i.e. prices with displays, for example) This creates a schedule of events for future promotions).

10. As per claim 2, Cunningham et al. discloses wherein the promotional engine further comprises a temporary price reduction optimizing engine for optimizing temporary price reduction prices after the promotional events and offers have been selected (See column 8, lines

1-11, column 11, lines 35-42 and line 65-column 12, line 12 and lines 45-55, wherein a temporary price reduction is considered by the promotional engine).

11 As per claim 4, Cunningham et al. discloses wherein the promotional engine calculates the value of offers and the value of promotional events by using the financial model and sales model and selects combinations of the offers and the promotional events (See column 2, lines 24-31, column 5, lines 13-42 and 59-65, column 11, lines 35-45 and 65-column 12, line 15 and lines 45-52, wherein the promotion engine uses outputs of the financial and sales models to determine offer and promotion events).

12. As per claim 5, Cunningham et al. discloses a method for creating a promotional event calendar, comprising:

creating a sales model (See column 2, lines 65-column 3, line 3, column 5, lines 13-23, column 6, lines 1-20, column 8, lines 1-10, column 10, lines 55-65, which discuss a sales model created in the system that considers sales data);

creating a cost model (See column 2, lines 45-52, column 5, lines 13-20 and 59-column 6, line 25, wherein a cost model is created in the system and considers cost data);

determining the value of offers using the sales model and cost model (See column 5, lines 14-41, column 8, lines 1-12, column 10, lines 55-65, column 11, lines 65-column 12, line 5 and lines 45-52, which discuss determining the value of offers using the models);

determining the value of promotional events using the sales model and cost model (See column 5, lines 25-41, column 6, lines 10-12, column 11, lines 65-column 12, line 5 and lines 45-52, which discusses the value of promotional events); and

selecting combinations of the offers and promotional events based on the determined values (See column 1, lines 59-63, column 2, lines 24-31, column 5, lines 25-41, column 11, lines 65-column 12, line 5 and lines 45-52, wherein the combination of offers and promotional events are selected based on determined values).

13. As per claim 6, Cunningham et al. wherein the creating of the sales model comprises:
  - creating a plurality of demand groups, wherein each demand group is a set of at least one product and wherein at least one of the demand groups is a set of at least two products (See column 2, lines 25-35, column 4, line 61-column 5, lines 8, column 6, lines 22-40 and 50-62, which discusses demand groups wherein a demand group is one product or more than one product, such as segment or brand family);
  - creating a sales model for each demand group (See column 2, lines 25-35, column 4, line 61-column 5, lines 8, column 6, lines 22-40 and 50-62, wherein sales data is obtained and modeled for a demand group); and
  - creating a market share model for each product in each demand group (See column 2, lines 45-57, column 4, line 61-column 5, line 12, column 6, lines 22-40 and 50-65, wherein a model is created concerning the market of the demand group).

14. As per claim 7, Cunningham et al. discloses the step of estimating net profit from the selected combination of offers and promotional events using the sales model and cost model (See column 5, lines 30-56, column 6, lines 1-22, wherein the net profit is estimated by using optimization, the sales and cost models).

15. As per claim 8, claim 8 recites equivalent limitations to claims 5-7 above and is therefore rejected using the same art and rationale applied above.

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham et al. (U.S. 6,029,139).

17. As per claim 3, Cunningham et al. teaches a promotional engine and outputting the optimized selection, as well as a client/personal computer (See figure 1, column 1, line 64-column 2, line 7, column 5, lines 14-45, column 11, lines 65-column 12, line 5 and lines 45-55). However, Cunningham et al. does not expressly discloses a support tool connected to the promotional engine that receives the promotional event calendar from the promotional engine and provides a user interface with the promotional event calendar to a client.

Cunningham discloses a system with client/server architecture and models that optimize promotional planning to create the output of promotional events and offers. Using an user interface to more efficiently display output to a user (or client) of a system is old and well known in the computer arts. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to display the output and optimized results to the user of the system in order to more efficiently communicate the results to the user for whom the analysis was performed. See column 2, lines 24-31, which discusses creating a plan to better meet the user's goals and figure 1 and column 1, lines 64-column 2, line 7, which discuss a personal computer connected to the system.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

McFarlin et al. (U.S. 2002/0023001) teaches creating promotional calendars for a retail establishment.

Boyd et al. (U.S. 2002/0123930) discloses promotion planning using sales volume and market share models.

Fox et al. (U.S. 5,521,813) teaches application software that helps plan advertising, promotions, and finances for a retail business using historical sales trend data and markdown and other promotional techniques.

Garg et al. (U.S. 6,044,357) discloses creating models to estimate revenue and costs and to plan a profit strategy.

“Essentus and Spotlight Solutions Partnership Delivers Precise Markdown Solutions” (Business Wire) discloses planning optimal markdown promotions using mathematical models.

Barth (“Shopko Tests Automated Markdowns”) discloses a markdown optimization tool that uses mathematical models to set markdown strategies at stores.

Melcer (“Local Tech Firm Creates Retail Markdown Tool”) discloses clearance optimizing software that recommends plans of markdowns to maximize revenue.

Cook (“Optimizing Space and Sales with Markdown Software”) discloses software that plans markdown strategies using a mathematical algorithm.

Technology Strategy Incorporated ([www.grossprofit.com](http://www.grossprofit.com)) discloses a mathematical modeling tool that uses a retailer's sales and cost data to create a markdown and promotion schedule.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*bvd*  
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May 10, 2005



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